

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 99-4252

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Foster D. Fuller,

Appellant,

v.

Charlie Graas; Dillon Corp.; Keith  
Beck, Employee, Gerbes West; Keith  
Arnel, Employee, Gerbes West; Kim  
Brinkmann, Employee, Gerbes West;  
Terry Beck, Store Manager, Gerbes  
West; Samantha Hagar, Employee,  
Gerbes West

Appellees.

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Appeal from the United States  
District Court for the Western  
District of Missouri.

[UNPUBLISHED]

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Submitted: February 7, 2001

Filed: February 16, 2001

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Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

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PER CURIAM.

Following entry of final judgment upon the district court's<sup>1</sup> findings at the conclusion of a bench trial, Foster Fuller appeals from the court's earlier orders denying him a jury trial, granting summary judgment to certain defendants, and denying him leave to amend in this civil rights action. Upon careful review of the record and the parties' submissions, we conclude that Dr. Fuller waived his right to a jury trial by failing to make a timely request for one, that the district court did not "amend" his complaint by liberally interpreting it for purposes of reviving his right to request a jury trial, and that the court did not abuse its discretion by declining to order a jury trial on Dr. Fuller's subsequent motion. See Fed. R. Civ. P. 38(b), 39(b). We also reject Dr. Fuller's contention that the district court abused its discretion in denying him leave to amend, and we find that the partial grant of summary judgment was proper. See Dirden v. Dep't of Hous. & Urban Dev., 86 F.3d 112, 114 (8th Cir. 1996) (per curiam) (§ 1981 plaintiff must prove discriminatory intent); Fitzgerald v. Mountain States Tel. & Tel. Co., 68 F.3d 1257, 1262-63 (10th Cir. 1995) (applying doctrine of respondeat superior to § 1981 action; employer is responsible only for intentional wrongs of employees committed in furtherance of employment).

Accordingly, we affirm. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable D. Brook Bartlett, late a United States District Judge for the Western District of Missouri.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.